IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6189 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMBHAI NARANBHAI PATEL

Versus

DIST. COLLECTOR

Appearance:

MR PH PATHAK for the Petitioners

MR IM PANDYA, AGP for Respondent Nos.1 & 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/03/2001

ORAL JUDGEMENT

#. This petition was admitted on July 10, 2000. Notice was served on the respondent but, till date no counter affidavit has been filed. Shri IM Pandya, learned AGP states that, he has not received papers of this case from the office. On the last date also, he was unable to

clarify the position as to whether, any amount has been recovered in pursuance of the recovery certificate or not. Consequently, the matter can not be permitted to be dragged on, in face of this inaction on the part of the respondent.

#. The brief facts are that the four petitioners were serving with the respondent no.2, Kalol Nagar Palika. They retired, and on retirement, they were entitled to gratuity. The gratuity to be paid to the petitioners by the Controlling Authority amounted to Rs.41,969=22, Rs.28,831=32, Rs.34,517=88 and Rs.30,920=76 respectively with 10% per annum simple interest. The gratuity was to be paid by the respondent no.2. However, since the gratuity was not paid, the petitioners moved the Controlling Authority. The Controlling Authority issued recovery certificates collectively (Annexure-'B') dated 1-11-1999, 1-11-1999, 3-5-1999 and 17-2-1999 respectively. It was to be executed by the respondent no.1 and the amount so realised out of four recovery certificates was to be paid to the petitioners. The petitioners were running from pillar to post. They made representation to the respondent no.1, but with no result. Ultimately, they sent a notice through their advocate on 16-11-1999. One of such notice is Annexure-'C', but this notice also remained unattended and nothing was recovered by the respondent no.1. It is, therefore, this petition.

#. From what has been narrated above, and since the above narration has not been controverted by any counter affidavit by the respondent no.1, it has to be held that the inaction of the respondent no.1 in not recovering the gratuity amount, in accordance with the recovery certificates, can not be appreciated. The petitioners retired between 1992-93, and it is surprising that during this long interval they have not been paid the retirement benefit like gratuity. As such, for this inaction of the respondent no.1, it is a fit case to issue writ of mandamus.

#. The petition, therefore, succeeds and is hereby allowed. The respondent no.1 is directed to execute the recovery certificates within a period of two months from today and shall also recover running interest at the rate of 10% per annum, as directed in the recovery certificates, till the date of recovery. The respondent no.1 shall pay Rs.2,000=00 as cost to the petitioners for this inaction.

March 23, 2001. [D.C. Srivastava, J.]

/sakkaf